

**Amendments to the Claims:**

Claims 1-21 are pending in the application. Claims 6, 9, 14, 18 and 21 have been amended herein. Please note that all claims currently pending and under consideration in the referenced application are shown below. Please enter these claims as amended. This listing of claims will replace all prior versions and listings of claims in the application.

**Listing of Claims:**

1. (Previously Presented) A transmitter, comprising:  
a processor operative to control a first transmission and retransmission of data; and  
a memory storage device operative for storing a plurality of computer-executable instructions to be executed by the processor comprising:  
a first set of instructions for receiving a first transmission frame error rate and a retransmission frame error rate from a receiver;  
a second set of instructions for determining a first transmission energy setpoint as a function of the first transmission frame error rate and a first transmission quality, wherein the determination of the first transmission energy setpoint is responsive to an update trigger; and  
a third set of instructions for determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality, wherein the determination of the retransmission energy setpoint is responsive to the update trigger.
2. (Previously Presented) The transmitter of claim 1, wherein the first transmission quality is measured by a received error indication signal.
3. (Previously Presented) The transmitter of claim 1, wherein the first transmission energy setpoint and the retransmission energy setpoint are determined as traffic to pilot ratios.
4. (Previously Presented) The transmitter of claim 1, wherein the third set of instructions determines the retransmission energy setpoint as a function of the retransmission frame error rate, the retransmission quality, and the first transmission energy setpoint.

5. (Previously Presented) The transmitter of claim 4, wherein the third set of instructions determines the retransmission energy setpoint by adding a delta value to the first transmission energy setpoint.

6. (Currently Amended) In a wireless communication system, a method comprising:  
determining a first transmission energy setpoint to achieve a first transmission frame error rate in a first transmission of data;

continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission at a processor, wherein the first transmission error is received from a receiver;

determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and

adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver.

7. (Previously Presented) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint as a function of the first transmission energy setpoint.

8. (Original) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint to achieve a desired frame error rate for retransmission.

9. (Currently Amended) The method of claim 6, wherein continuously adjusting the first transmission energy setpoint further comprises:

adjusting the first transmission energy setpoint to achieve a desired frame error rate for transmission.

10. (Previously Presented) The method of claim 6, wherein the first transmission frame error rate is greater than the retransmission frame error rate.

11. (Previously Presented) The method of claim 6, wherein the first transmission frame error rate and the retransmission frame error rate result in a desired total frame error rate.

12. (Previously Presented) The method of claim 6, wherein the first transmission frame error rate and the retransmission frame error rate are predetermined values.

13. (Previously Presented) The method of claim 6, wherein the first transmission frame error rate and the retransmission frame error rate are dynamic values.

14. (Currently Amended) A computer-readable medium encoded with computer executable instructions, comprising:

a first set of instructions for receiving a first transmission frame error rate and a retransmission frame error rate from a receiver;

a second set of instructions for determining a first transmission energy setpoint as a function of the first transmission frame error rate and a first transmission quality, wherein the determination of the first transmission energy setpoint is responsive to an update trigger; and

a third set of instructions for determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality, wherein the determination of the retransmission energy setpoint is responsive to the update trigger.

15. (Previously Presented) The computer-readable medium of claim 14, wherein the first transmission quality is measured by a received error indication signal.

16. (Previously Presented) The computer-readable medium of claim 14, wherein the first transmission energy setpoint and the retransmission energy setpoint are determined as traffic to pilot ratios.

17. (Previously Presented) The computer-readable medium of claim 14, wherein the third set of instructions determines the retransmission energy setpoint as a function of the retransmission frame error rate, the retransmission quality, and the first transmission energy setpoint.

18. (Currently Amended) An apparatus, comprising:  
means for determining a first transmission energy setpoint to achieve a first transmission frame error rate in a first transmission of data;  
means for continuously adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission, wherein the first transmission error is received from a receiver;  
means for determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and  
means for adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver.

19. (Previously Presented) The apparatus of claim 18, wherein the means for adjusting the retransmission energy setpoint further comprises:  
means for adjusting the retransmission energy setpoint as a function of the first transmission energy setpoint.

20. (Previously Presented) The apparatus of claim 18, wherein the means for adjusting the retransmission energy setpoint further comprises:  
means for adjusting the retransmission energy setpoint to achieve a desired frame error rate for retransmission.

21. (Currently Amended) The apparatus of claim 18, wherein the means for continuously adjusting the first transmission energy setpoint further comprises:  
means for adjusting the first transmission energy setpoint to achieve a desired frame error rate for transmission.